IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.733 OF 2002
IN
SUIT NO.1003 OF 1993

1. Noorjahan wd/o. Altaf Ahemd aged 45 years of Bombay Indian Inhabitant, residing at Rehmat Manzil, Tandel Street, Bombay 400 009.

2. Iqbal Ahmed Altaf Ahmed Khan

3. Sardar Ahmed Altaf Ahmed Khan, both residing at Village Behta, Junhan, District Fatehpur, U.P. ..Appellants (Orig.Plffs.)

Vs.

1. Sadrunisa wd/o. Haji Fatehulla Khan aged 42 years of Bombay, Indian Inhabitant, residing at Room No.16, 3rd Floor, B.I.T. Block No.4, Ibrahim Rehmatulla Road, Bombay-3

1A. Shabnam Banoo D/o. Sadrunisa of Bombay Indian Inhabitant, residing at Room No.16, 3rd Floor, BIT Block No.4, Ibrahim Rehmatulla Road, Bombay 400 003.

2. Ali Mohammed Khan Abdul Jabbar, aged 60 years, residing at Daryabad, U.P.

2A. Noor Mohammed Ali Mohammed Khan, an Indian Inhabitant, aged about 50 years.

2B. Sayeed Ahmed, aged about 40 years,

2C. Nazab Khan, aged about 27 years, All residing at Dimtimkar Road, Noorani Patel Mansion, Ground Floor, Room No.43, Nagpada, Mumbai 400 003.

2D. Nafiz Ahmed, aged about 22 years residing at Karbala Masjid, Vijay Nagar, Antop Hill, Mumbai 400037.

3. Abdul Sattar Khan Abdul Jabbar, aged 55 years, residing at Daryabad, U.P.

3A. Abdul Gafar Khan, aged about 50 years, Village Daryabad, Post Ajmatpur, Zilla Fatehpur, U.P. residing at

3B. Abdul Wahab Khan, aged about 45 years, residing at 90 Feet Road, Khan Retiwala, Mukbai 400 072.

4. Hajirabibi wd/o. Iftikhar Ahmed Khan aged about 45 years, residing at Fatehpur, U.P.

5. Mehmood Ahmed Rehmatulla Khan, aged about 20 years, residing at Rehmat Manzil, Tandel Street, Bombay 400009.

6. Masood Ahmed Rehmatulla Khan, aged 17 years.

7. Mohiuddin Rehmatulla Khan, aged 13 years.

8. Allahbux Rehmatullah Khan, aged 4 years.

9. Zubeda D/o.Rehmatulla Khan,

aged 5 years.)
)
10.Zahida d/o.Rehmatulla Khan,)
aged 5 years.)
)
11.Sajida d/o.Rehmatullah)
Khan, aged 5 years,)
Defendant Nos.7 to 12 all)
minors residing at Rehmat)
Manzil, Bombay 400 009, by)
their next of kind and)
Guardian Mehmood ahmed)
Rehmatulla Khan, Defendant)
No.6.)
)
12.Gayasunissa, residing at)
Lahouri Mohalla, Masba,)
Bindki Taluka, Dist.)
Fatehpur, U.P.)
)
13.Shajehan Urf. Appu,)
residing at Village Behta,)
Post Junihan, Taluka)
Bindki, Dist.Fetehpur)
Haswa, U.P. Respondents)
No.12 and 13 being two of)
the daughters of Noorjehan)
(Deceased) Original)
Plaintiff No.1.) ..Respondents.
Respt. Nos.1 to
11 Orig.Defts.)

Ms.H.Advani i/b.Sagheer Ahmed for the Appellants.

Mr.M.S.Sanghvi with Mr.Snehal Shah with Ms.F.Sayeed i/b.M/s.Bilawala & Co. for Respondent Nos.1 and 1A.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 24TH MARCH, 2005

ORAL JUDGMENT : (Per S.J.Vazifdar, J.)

This is an Appeal against the order of the learned single Judge dismissing the Appellant’s suit

with costs.

2. One Haji Fatehulla Hajee Talib Khan (hereinafter referred to as the deceased) expired intestate at Fatehpur on 16.12.1976. His first wife Gafronissa expired on 6.3.1984. Defendant No.1 is his second wife. Original Plaintiff No.1 was the daughter of Gafronissa and the deceased. Plaintiff Nos.2 and 3 are the sons of original Plaintiff No.1. The remaining defendants are the heirs of the brothers viz. Abdul Jabbar Haji Talib, Rehmatulla Khan Haji Talib and the sister, Smt.Nasibanbibi of the deceased. Nasiban Bibi pre-deceased the deceased.

Respondent No.1A was impleaded as Defendant No.1A pursuant to a Chamber Summons being Chamber Summons No.133 of 1994 filed by Defendant No.1. The Chamber Summons was dismissed by the learned single Judge. The Appellate Court however directed the Plaintiffs to implead her as a party Defendant keeping the question as to whether or not she was the daughter of the deceased and Defendant No.1 open at the hearing of the suit.

3. The Appellants/Plaintiffs have filed this suit for a declaration that they are entitled to a six

and forty four paisa share respectively in the estate of the deceased, for an order directing Defendant No.1 to disclose all the assets of the deceased come to her hands after his death, for the administration of the estate of the deceased and for consequential reliefs towards the administration of the estate of the deceased.

4(a). The said Gafronissa and original Appellant No.1 had originally filed a suit in the Bombay City Civil Court being Suit No.1988 of 1977 against Defendant No.1 and others. The office had taken an objection to the valuation in the suit of Rs.300/-. The Plaintiff therein took out Chamber Summons No.487 of 1984 to challenge the order. Ultimately, the Bombay City Civil Court by an order dated 14.9.1984 directed her to value the claim in suit at Rs.93,322.88, held that the value exceeded the pecuniary jurisdiction of the City Civil Court and therefore ordered the plaint to be returned for presentation to the appropriate Court after amending the plaint. In the meantime, Gafronissa expired on 6.3.1984.

(b). The Appellants thereafter filed Suit No.3219 of 1984 in this Court. The Appellants applied for

an amendment to add certain properties situated at Fatehpur in U.P. to Exhibit "A" of the plaint which contain the details of the estate of the deceased. A learned single Judge by an order dated 28.9.1992 directed the proposed amendment to be considered only after the Plaintiff's Petition for leave under clause XII of the Letters Patent was decided.

(c). The Plaintiff's Petition for leave was filed on 8.10.1992 and the Plaintiff re-lodged the plaint. However, leave under clause XXII of the Letters Patent was refused by Jhunjhunwala, J. (as he then was). The suit was thereafter given its present number.

5. In the circumstances, the present suit is concerned only with the Bombay properties of the deceased. It is clarified that as agreed by the counsel on both the sides, the rights and contentions of the parties decided in this suit, including in this Appeal, are restricted to the Bombay properties of the deceased and this judgment shall not affect their rights qua any other properties in any other proceedings in respect thereof. It is therefore not necessary to go into the rival contentions inter-alia regarding the U.P.

properties.

6. Respondent No.1/Defendant No.1 filed a written statement. The reference in this judgment to Defendants/Respondents will be to Respondent Nos.1 and 1A i.e. Defendant Nos.1 and 1A unless otherwise specified.

7. The Defendants contended that the deceased had divorced his first wife the said Gafronissa and thereafter married Defendant No.1 and out of this wedlock Respondent No.1A Shabnam Banoo was born on 12.6.1977. The deceased was governed by the Hanafi law. It is therefore contended that the parties herein except Respondent No.1A are the only heirs and next of kin legally entitled to the estate of the deceased to the exclusion of all others.

8. The first Defendant married the deceased on 3.12.1950. Defendant No.1 and the deceased had a daughter who expired when she was only five years old. They also had a son who died within a week. A third child died at birth. Defendant No.1 has further stated that she had four to five miscarriages. She was therefore hospitalized.

9. Respondent No.1 however states that thereafter she conceived Respondent No.1A in October 1976. It is important to note that the deceased died on 16.11.1976 at the age of 85 and Defendant No.1A was born on 12.6.1977. The Appellant's case is that he was for some time paralysed and bed-ridden. Respondent No.1 however denies the same and contends that he was merely diabetic. Respondent No.1 alleges that she had not informed anybody about the birth of Respondent No.1A as the Plaintiff threatened to kill her if any claim was made on behalf of Respondent No.1A to the estate of the deceased. The Plaintiff had alleged that a settlement had been arrived at on 23.12.1976 between the first and the second wife of the deceased in the presence of seven panaches. This agreement has been denied in the written statement. The Respondents have also denied the alleged Will dated 7.6.1979 executed by Gafronissa in favour of the Appellants.

10. The first Respondent's case is that the deceased gave his first wife and the Appellant's agricultural land admeasuring 26 bighas and that the deceased during her life time had made over to her a running business carried on in the name and style of U.P. Milk Bar & Eating House (hereinafter referred

to as the said business) and Shop No.4 in Mumbai together with all moveable and articles lying therein. Further, according to her, the deceased made an application to the Municipal Corporation of Greater Bobby (B.M.C.) for transfer of the tenancy of Shop No.4 and of Room No.16 in Block No.4 situated at Mumbai from his name to that of the first Defendant. According to her, thereafter, the rent receipts have been issued by the B.M.C. in her name. The said business was made over to her by way of a hibba i.e. oral gift and the deceased placed her in physical possession, occupation and management thereof. This case is sought to be supported inter-alia by a document dated 10.1.1968. Respondent No.1 further alleges that it was she who looked after the deceased till his death and that none of the other Defendants or the Plaintiffs had ever bothered about him.

11. The following issues were framed by the learned single Judge :

1. Whether the Plaintiffs prove that Defendant No.1A is not born of the wedlock of the deceased Haji Fatehullah Khan to Defendant

No.1 ?

2. If the answer to the above issue is in the affirmative then whether Plaintiff No.1 as daughter of the deceased and Defendant No.1 are the only heirs and next of kin legally entitled to the estate of the deceased under the Hanafi Law of Inheritance ?

3. Whether under the provisions of the Hanafi Law of Inheritance Defendant Nos.2 to 11 are the distant kindred of the deceased ?

4. If the answer to the above issue is in the affirmative then whether Defendant Nos.2 to 11 are entitled to any share in the estate of the deceased either as sharers or residuaries under the provision of Mohammedan Law (Hanafi) ?

5. If the answer to the above Issue is in the affirmative, then whether the suit as filed by the Plaintiff is bad for misjoinder of parties and causes of action ?

6. Whether the Plaintiff has suppressed

material facts and documents from this Honourable Court in order to mislead this Honourable Court ?

7. Whether Plaintiff No.2 has any personal knowledge of the dealings in respect of the running business of U.P.Milk Bar & Eating-House together with Shop No.141 situate at Janjikar Street, Bombay-400003 ?

8. If the answer to the above issue is in the affirmative then whether the suit as filed is bad in law and liable to be dismissed

9. Whether the Plaintiffs prove that on the date of filing of the suit Defendant Nos.2 to 11 were minors ? If yes, what is the effect on the suit ?

10. What reliefs ?

12. Before considering the rival contentions, it is important to note two things.

13. Firstly, Mr.Sanghvi, the learned senior counsel

appearing on behalf of Respondent Nos.1 and 1A stated that Respondent Nos.1A will not make any claim in respect of the estate of the deceased so far as the Mumbai properties are concerned. He further agreed that the Appellants shall not be precluded from contending that Respondent No.1A is not the daughter of the deceased and Respondent No.1.

14. Secondly, Ms.Advani stated that the Appellants are restricting the claim in suit only in respect of three of the Bombay properties allegedly forming part of the estate of the deceased viz. the said business, the said Shop No.4 and the said Room No.16.

15. Normally, this being an administration suit, we would have passed only the usual preliminary decree in such suits. However, in view of the above statements and in view of our findings that these three items did not form part of the estate of the deceased, it is not necessary for us to determine the share of the parties in the estate of the deceased. We are therefore inclined to dismiss the suit itself but subject to the reservation of the rights of the Appellants qua any other properties of

the deceased.

16. Three witnesses were examined on behalf of the Plaintiff viz. one Mashooq Khan Faraud Khan, Plaintiff No.2 and one Shridhar Janardhan Shukla Plaintiff No.1 was sought to be examined. The Defendant's counsel objected to the same. Thereupon, she was withdrawn as a witness. It is not necessary for us to analyse or consider much of the evidence of the Plaintiff's witnesses in view of the above statements made by both the counsel and in view of our findings which we shall shortly state.

17. There is considerable evidence regarding the properties in Fatehpur. The Appellants have also lead evidence regarding an alleged settlement dated 23.12.1976 between Respondent No.1 and Gafronissa after the death of the deceased. However, in view of Ms.Advani's statement recorded above, restricting the suit to the Mumbai properties, it is not necessary to consider this evidence.

18. A substantial part of the evidence of the Appellant's witnesses pertains to the Defendant's case that Defendant No.1A is the daughter of the deceased. In view of Mr.Sanghvi's above statement,

it is not necessary to consider this evidence. It is in view of this statement and this statement alone that we refrain from going into the question as to whether Respondent No.1A/Defendant No.1A was the daughter of the deceased although much was said on this aspect by Ms.Advani, the learned counsel appearing on behalf of the Appellants in a well analysed argument before us and in her equally well prepared written submissions. We accept the submission of Mr.Sanghvi, made on behalf of Respondent Nos.1 and 1A that it will be open to the Appellants to contend in any other proceedings wherever instituted, including in Mumbai, that Respondent No.1A was not the daughter of the deceased. It is however necessary to refer to one aspect of the impugned judgment. The learned Judge has held that Respondent No.1A is the daughter of the deceased and Respondent No.1 by invoking the presumption under section 112 of the Evidence Act which reads as under :

> "**112. Birth during marriage, conclusive proof of legitimacy.-**The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried,

> shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no, access to each other at any time when it could have been begotten."

The presumption under section 112 cannot arise in the facts of the present case. This is not a case where the maternity of the child is admitted. In fact, it is disputed by the Appellants who allege that Respondent No.1A is the daughter of the first Respondent sister. The Privy Council in *Nand Kishwar Bux Roy v. Gopal Bux Rai & Ors., AIR 1940 Privy Council, 93* held that section 112 can have no application to the case where the maternity of a person is in dispute and not his paternity.

19. The oral evidence supports the Plaintiff's case that the deceased never divorced Gafronissa. The Appellant's witnesses have deposed to this effect and we find that thee is no effective cross-examination of these witnesses in this regard. The Respondent's case to the contrary has not even been put to the Appellant's witnesses. Further, Respondent No.1 only examined herself. She did not lead any evidence or furnish any particulars of the alleged divorce of Gafronissa. The Respondent's

only reliance in this regard is upon a writing dated 10.1.1968 allegedly executed by the deceased. Even assuming that the document is proved the contents thereof as regards the alleged divorce have not been proved. The document does not contain any details. However, this does not carry the Plaintiff's case any further in view of our finding that the Mumbai properties were transferred to Defendant No.1 during the life time of the deceased.

20. Defendant No.1 examined herself. She did not examine any other witness.

21. Ms.Advani submitted that the writing dated 10.1.1968 was false and fabricated and that no reliance can be placed thereon. In support of this submission, she relied essentially on the fact that the alleged writing was not produced in the initial stages of the litigation between the parties. The suit was filed in the Bombay City Civil Court on 9.3.1977. Gafronissa had filed a Notice of Motion for interim reliefs therein being Notice of Motion No.942 of 1977. Respondent No.1 filed an affidavit in reply thereto dated 5.7.1977 which did not mention the alleged writing. She merely stated that she was the tenant in respect of the said premises

and the owner of all things lying therein and that accordingly the same did not form a part of the estate of the deceased. An interim order dated 27.9.1977 was passed appointing a Court Receiver. Respondent No.1 filed an Appeal being A.O.No.386 of 1977 against the said order. The alleged writing was not mentioned in the A.O. either. It is only thereafter in 1978 that Respondent No.1 referred to the said writing. She did so in Notice of Motion No.3365 of 1978 taken out by her to review the earlier order in view of the fresh evidence.

22. Thus, it is clear that the alleged writing surfaced for the first time only in 1978. This is no doubt a strong factor in support of the Appellant's contention regarding the same. We are also in agreement with Ms.Advani that there are certain discrepancies in the evidence of the Respondent in respect of the said writing. Ms.Advani submitted that Respondent No.1 has merely proved the signature of the deceased on the said writing; that she has not led any evidence to prove the handwriting of the scribe of the document and that admittedly, the document was not written by the deceased. She submitted that the mere proof of the signature would not prove the contents of the

document or the truth thereof.

23. Ms.Advani submitted that the said writing dated 10.1.1968 does not have the effect of creating a gift in respect of the said premises by the deceased in favour of the first Respondent. We agree. The plain language of the document establishes that what is stated therein qua the Mumbai properties is a record of what had allegedly transpired earlier viz. relinquishment of the rights of the deceased in respect of the said properties and creation of the same in favour of Respondent No.1. The relevant part of the writing reads as under :

> "Further, this fact also requires clarification. As regards all the goods inside the shop bearing No.141 Janjikar Street, Bombay-400003 styled "U.P. Milk Bar and Eating House" and inside Room No.16, 3rd Floor, B.I.T. Block No.4, Ibrahim Rahimtulla Road, Bombay-400 003 are not of the ownership and possession of this deponent. The owners of the said shop and the room is the Municipal Corporation of Greater Bombay and the said Musammat Sadrunnisa is the tenant of both of them. And all the house hold articles which are there in the room and all the articles relating to business lying in the shop are in the possession and occupation of the said

Musammat Sardinians. The deponent is neither the owner in occupation of the same nor has he anything to do with the same. The said Mussammat Sadrunnissa is a ‘Parda Nishin’ lady she can neither personally sit on the shop and conduct the business nor can she attend the office concern and obtain required licences. The deponent as the husband of the said Musammat Sadrunnisa, sits on the shop and runs and the said business thereof as her agent and at her instance and with her consent. The licence of a shop made only the name of the person who runs the business. Therefore, from such licence the deponent has not at all acquired any right of ownership and possession nor shall be ever acquire the same. If after the death of the deponent any dispute of any kind arises in respect of the said shop and the said room or the business run in the shop or the articles lying in the room the same should be entirely null and void and illegal. After the oral gift (was made) Mussammat Sadrunnisa in whose favour the gift was made in order to safeguard from the future disputes which may arise insisted that the deponent should give in writing a memo of the oral gift and hand over the same to her for her satisfaction. Therefore, these few words given in writing as and by way of memorandum or the oral gift after hearing and understanding the same, for the satisfaction of Musammat Sadrunnisa in whose favour the gift is made and hand over the same to her so that it may remain as proof and be useful when required."

Thus, the entire controversy whether the document created a gift in respect of the Mumbai properties or not is unnecessary.

24. However, even if it is held that the writing dated 10.1.1968 is not proved or that the same does not create a gift by the deceased in favour of Respondent No.1, it does not advance the Appellant's case qua the Mumbai properties. It is therefore not necessary to decide whether the contents or the truth of the contents of the writing dated 10.1.1968 have been proved.

25. It is an admitted position that the rent receipts in respect of both the premises stand in the name of Respondent No.1. Indeed, they have stood in her name atleast since 1969. Respondent No.1 in her examination-in-chief stated that her deceased husband had submitted in the Municipality an application in respect of Room No.16. She identified the signature of the deceased. The document was however exhibited with the note that the exhibition of the same does not by itself prove that it was submitted to the Municipal authorities.

Respondent No.1 further stated that she had also submitted an application to the Municipality in respect of Shop No.4. She produced a copy of the application dated 5.2.1968. The same was however only marked for identification. It is however important to note that she produced the original reply dated 2.5.1969 received from the Municipality (Exhibit "D-4"). It is further pertinent to note that there was no effective cross-examination in respect of this document. There was no objection taken to the document being received and marked in evidence either. Even if we assume that the document Exhibit "D-3" i.e. the application of the deceased in respect of Room No.16 has not been proved to have been served on the Municipal Corporation, it certainly indicated the intention of the deceased qua the said premises. The intention was to have the tenancy transferred in the name of Respondent No.1. The case of Respondent No.1 in respect of both these premises is further fortified by the fact that the rent receipts in respect thereof have been issued in the name of Respondent No.1. Respondent No.1 produced thirteen rent receipts (Exhibit "D-6 collectively") in respect of Shop No.4. Each of these rent receipts is in her name. Further, she has also produced nine

electricity bills pertaining to Shop No.4 (Exhibit "D-7 collectively"). Each of these bills is issued in her name. Lastly, she has produced a certificate dated 22.10.1991 (Exhibit "D-5") issued by the B.M.C. certifying that Respondent No.1 is bonafide tenant of the Municipal Corporation in respect of Shop No.4 as per the record of the Corporation.

26. We find that there is no effective cross-examination of Respondent No.1 in this regard. In fact, there was no objection to the documents even been taken on record.

27. Similarly, even in respect of the said Room No.16 Respondent No.1 produced rent receipts and electricity bills. She produced seven rent receipts (Exhibit "D-8"). The objection was taken that some of the rent receipts were not in the name of Respondent No.1 but in the name of one "Sudenham" and that in respect of such rent receipts only the payment was shown to have been made by Respondent No.1. Admittedly, all the rent receipts are for Room No.16 (Exhibit "D-9 collectively"). There appears to have been an error in writing the name only in respect of some of the rent receipts.

28. Even in respect of the aforesaid documents pertaining, to Room No.16 there was no effective cross-examination. The Appellants did not even object to the documents being received and marked in evidence.

29. Thus, the rent receipts in respect of the premises have stood in the name of Respondent No.1 atleast seven years prior to the death of the deceased. This fact to our mind establishes quite clearly that the tenancy rights did not stand in the name of the deceased at the time of his death. He quite clearly relinquished his tenancy rights in respect of the said premises. Thereafter, the first Respondent has been recognised as a tenant in respect of the said premises.

30. It is pertinent to note that the Plaintiffs did not summon the records of the B.M.C. to belie the first Respondent’s case that during the life time of the deceased he ceased to be a tenant in respect of the said premises. Indeed, it was necessary atleast in the first instance for the Plaintiff to establish that the deceased was in fact the tenant in respect of the said premises. This is in view of the fact that his right, title and interest therein had been

denied in the written statement. In these circumstances, the mere fact that at one time he was the tenant in respect of the premises would not be sufficient to establish that he had such rights upto the date of his death. In the circumstances, it must be held that the deceased had no right, title and interest in respect of Shop No.4 and Room No.16 at the time of his death.

31. This leaves for consideration the business of the U.P. Milk Bar & Eating House. It is true that there are no books of accounts or vouchers produced in respect of the said business. However, considering the facts and circumstances of the case on a balance of probabilities, we are inclined to accept the case of Respondent No.1 that she took over the said business. We have already held that the tenancy rights were transferred in her name seven years prior to the death of the deceased. There is nothing to suggest that the first Respondent's case in this regard is false. There is no effective cross-examination either. The mere fact that the licence has not been transferred to the name of the first Respondent cannot be held against her.

32. In the cross-examination, Respondent No.1 was confronted with Exhibit P-4, a letter dated 7.1.1977 addressed by the Appellant to the Home Minister for Maharashtra complaining about threats being received by her at the shop. It is difficult to understand how this letter can be of any assistance to the Appellant. Respondent No.1 has stated therein that the shop known as "U.P. Milk Bar" was in her name and her nephew was conducting the said business therein on her behalf. This letter supports the case of Respondent No.1 that the business also stood transferred to her. After confronting Respondent No.1 with a letter, we do not see any cross-examination thereon which can be of any assistance to the Appellant.

33. The Appellants alleged that after the death of the deceased Gafronissa and Respondent No.1 entered into a settlement in writing dated 23.12.1976. Even assuming that the alleged settlement dated 23rd December, 1976 (Exhibit "P-1") is valid and binding between the parties, it is of no assistance to the appellants in view of our finding that the Bombay properties stood transferred to Respondent No.1. Clause 1 of the said writing merely states that the moveable and immovable properties belonging to the

deceased in his name will be shared between the two widows equally. We have already held that the said properties did not stand in his name. The settlement dated 23rd December, 1976 is therefore of no assistance to the Appellant.

34. In the circumstances, the Appeal is dismissed.

35. Despite the fact that we have dismissed the Appeal, this is not a fit case to follow the normal rule of awarding costs in favour of the successful party. The order of costs made by the learned single Judge in favour of the Respondents ought to be set aside for more than one reason. Firstly, as recorded in the notes of evidence by the learned single Judge, Respondent No.1 behaved in an extremely unbecoming manner. She was rude to the Court. She was rude to the counsel who was cross-examining her. She used abusive language. She continued behaving in this manner despite the Court having warned her about the same. The learned Judge therefore rightly recorded that the conduct of the witness was reprehensive and amounted to contempt. The Court refused to accept her apology and held that she deserved to be dealt with under section 345 of the Cr.P.C. in order to maintain the

dignity of the Court and to make her realise that she should behave in a decent and courteous manner while in the witness box. No party even if successful at the final hearing of the case is entitled to costs in such circumstances.

36. Further, much of the oral evidence was necessitated due to the Respondent's conduct. It was the Respondent who belatedly produced the document dated 10.1.1968 which formed the basis of extensive arguments and oral evidence. A lot of time was also spent on the question whether Respondent No.1A was the daughter of the deceased and Respondent No.1. Much of this was necessitated inter-alia due to the belated plea in this regard by Respondent No.1. These reasons, in addition to the conduct of the first Respondent, disentitles her to the costs of this suit.

37. In the circumstances, the Appeal is dismissed but with no order as to costs. The order of the learned single Judge awarding costs is however set aside.